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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6 Fredrick J. Benson,

7 Petitioner

8 v.

9 William Hutchings, et al.,

10 Respondents
11

Case No.: 2:21-cv-01850-APG-BNW

Order

12 In this habeas proceeding under 28 U.S.C. § 2254, I entered an order to show cause why I
13 should not dismiss this action as an unauthorized second or successive petition. ECF No. 6.
14 Petitioner, Fredrick Benson, filed a response to the order. ECF No. 10. For reasons that follow, I
15 dismiss this case for lack of jurisdiction.

16 In my order to show cause, I noted that Benson's prior habeas petition challenging the
17 same judgment of conviction he challenges in this case was denied on the merits by this court in
18 *Benson v. Budge*, Case No. 3:05-cv-00464-GMN-VPC, 2015 WL 1442293 (D. Nev. Mar. 30,
19 2015). ECF No. 6 at 1. I also noted that my review of the Ninth Circuit's on-line docket revealed
20 that Benson applied for authorization to file a second or successive petition, but the Ninth Circuit
21 denied his application. *Id.* (citing *Benson v. Dzurenda*, Case No. 20-72548).

22 In his response to my order to show cause, Benson argues that there have been
23 substantive changes in the law that entitle him to additional collateral review of his judgment of


1 his conviction. ECF No. 10. Even if that is so, the Antiterrorism and Effective Death Penalty Act
2 of 1996 (AEDPA) established a “stringent set of procedures” that a prisoner seeking § 2254
3 relief “must follow if he wishes to file a ‘second or successive’ habeas corpus application.”
4 *Burton v. Stewart*, 549 U.S. 147, 152 (2007). As the Court in *Burton* makes clear, the district
5 court is without jurisdiction to entertain a second challenge to the same judgment of conviction if
6 the petitioner has not received authorization from the court of appeals. *Id.* at 153. Benson makes
7 no showing that his petition in this case is not a second or successive petition or that he has
8 received authorization from the court of appeals.

9 **I THEREFORE ORDER** that Benson’s petition for writ of habeas corpus (ECF No. 7)
10 is dismissed for lack of jurisdiction. The Clerk shall enter judgment accordingly and close this
11 case.

12 **I FURTHER ORDER** that a certificate of appealability is DENIED as jurists of reason
13 would not find it debatable whether I am correct in my ruling.

14 **I FURTHER ORDER** that the Clerk shall add Aaron D. Ford, Attorney General of the
15 State of Nevada, as counsel for respondents and ELECTRONICALLY SERVE the petition and a
16 copy of this order on the respondents.

17 Dated: May 19, 2022

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20 U.S. District Judge Andrew P. Gordon
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